

ESTATE OF THOMAS S. WILLIAMS, DECEASED
MRS. LUCILLE WILLIAMS

IBLA 70-215

Decided March 19, 1973

Appeal from a decision by the Bureau of Land Management's Office of Appeals and Hearings declaring that portions of certain mining claims were null and void because of withdrawal under a power project, and rejecting a verified statement to the extent it referred to claims in the area withdrawn.

Affirmed.

Mining Claims: Lands Subject To -- Withdrawals and Reservations: Effect of:

A mining claim is properly declared null and void ab initio to the extent it has been located on lands withdrawn from mineral location by a power project classification.

Surface Resources Act: Verified Statement -- Mining Claims: Surface Uses

A verified statement required under the Act of July 23, 1955, is properly rejected to the extent a mining claim, in connection with which it was filed, is held null and void because it was located on land withdrawn from mineral location.

Mining Claims: Power Site Lands -- Mining Claims Rights Restoration Act --
and Reservations: Power Sites

Withdrawals

The Mining Claims Rights Restoration Act did not retroactively validate mining claims located prior to the Act while the land was within a power withdrawal.

APPEARANCES: Wallace T. Hyde., Esq., Sacramento, California, for appellants.

OPINION BY MRS. LEWIS

This is an appeal from a decision of the Office of Appeals and Hearings, Bureau of Land Management, affirming the decision of the

Sacramento Land Office dated December 4, 1969. The latter decision held that certain mining claims located on August 9, 1940 (Gold Star Group #1, #2, and #3), were null and void ab initio to the extent that they invade lot 2, sec. 15, T. 19 N., R. 6 E., M.D.M., California, and held a verified statement, filed pursuant to the Act of July 23, 1955, 30 U.S.C. §§ 613 et seq. (1970), ineffective to the extent of the claims located in said lot 2. The reason for the holding is that lot 2, sec. 15 was withdrawn from mineral location when it was included in Power Project 687 on January 18, 1926, and at the time the Gold Star Group of claims was located, the lands had not been restored to mineral location pursuant to section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1970).

The verified statement filed on November 17, 1969, described the claims as being located in lot 2 and the NE 1/4 NW 1/4 of said section 15.

The holdings in the decision below are correct as to the claims asserted in the verified statement to have been located in 1940. Because the claims were located when the lands were withdrawn for a power project, the claims were null and void ab initio and no rights could be gained under the mining claims so long as the land was withdrawn. Gardner C. McFarland, 8 IBLA 56, 58 (1972). As the mining claims are null and void because the land was withdrawn at the time of location, the verified statement filed in connection with the claims is properly rejected. See John H. Lawrence, et al., A-30321 (February 3, 1965).

In their appeal, appellants contend that the Bureau's decision should be reversed because they claim title to the premises by predecessors in interest to the year 1891. They presented photostat copies of several deeds which purport to constitute the chain of title back to 1891. However, a careful study of these documents reveals that none of the deeds prior to 1940 refers to lot 2, section 15, as being land affected thereby. Instead, those deeds refer to mining claims by other names, which are located within the NE 1/4 NW 1/4 of said section 15. Even the deed of February 9, 1944, from A. J. Mullin to Henry P. Baack and Nina J. Baack describes the Keisel placer mining claim embracing the E 1/2 NE 1/4 NW 1/4 of said section 15. ^{1/}

^{1/} The photostat copies are reduced in size and so unclear that they are difficult to read. However, they were carefully examined with the aid of a magnifying glass and we were definitely able to determine that none of the deeds referred to lot 2.

Accordingly, since the evidence submitted by the appellants fails to establish any connection with lot 2 prior to the 1940 locations asserted in the verified statement, the subject claims are null and void ab initio to the extent that they invade said lot 2. See J. Everett Nelson, A-29174 (February 4, 1963).

Although it could not breathe life into an invalid claim located while the land was withdrawn as in this case, we mention, in passing, that the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. §§ 621 et seq. (1970), opened to mineral location and patent, lands within power withdrawals with a reservation to the United States of power rights in the lands. Excepted from this opening are lands (1) included in any project operating or being constructed under a license or permit from the United States, and lands (2) under examination and survey by a prospective licensee of the Federal Power Commission pursuant to a preliminary permit issued under the Federal Power Act. This Act also prescribed certain conditions under which a mining location can be made. Furthermore, even if a new mining location could be made on the lot in issue within the prescribed limitations of the Act, the claim could still be defeated by intervening rights such as other claims or a withdrawal of the land for purposes other than power purposes. However, no determination is made as to whether the lot here involved is the subject of a new location, or a substitute for a new location by any holding pursuant to 30 U.S.C. § 38 (1970), since the enactment of the Mining Claims Rights Restoration Act. Cf. Gardner C. McFarland, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, and the case file is being returned to the local Bureau of Land Management office for appropriate action on the verified statement insofar as it relates to the NE 1/4 NW 1/4 of said section 15.

Anne Poindexter Lewis, Member

We concur:

Martin Ritvo, Member

Frederick Fishman, Member.

